

Approved as Submitted: September 7, 2005

**CITY OF MORGAN HILL  
JOINT REGULAR REDEVELOPMENT AGENCY  
AND SPECIAL CITY COUNCIL MEETING  
MINUTES – AUGUST 24, 2005**

**CALL TO ORDER**

Chairman/Mayor Kennedy called the special meeting to order at 7:03 p.m.

**ROLL CALL ATTENDANCE**

Present: Agency/Council Members Carr, Grzan, Sellers, Tate and Chairperson/Mayor Kennedy

**DECLARATION OF POSTING OF AGENDA**

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**RECOGNITIONS**

Mayor Kennedy and Mayor Pro Tempore Tate presented Certificates of Recognition to outstanding high school athletes, acknowledging their exceptional performances in local sports as follows: Andrew Cummins, Ronni Gautschi, Ryan Gautschi, Laura Melroy, Dustin Muhn, Doug Porras, and Katie Renteria. Cobbie Jones, Chelsea Laning, Lena Marsh, Michelle McDonald, Brandon Powell, Shaun Standridge and Billy Wong were not in attendance to receive their certificates.

**CITY COUNCIL SUBCOMMITTEE REPORT**

Council Member Carr reported that the Public Safety & Community Services Committee met this evening and has requested that staff return in September to update the entire Council regarding the status of discussions between the two sports groups on the operation and maintenance of the outdoor sports complex. He noted that the Council requested that by October 2005 that these two groups agree on one proposal for the operation and maintenance of the sports complex. He indicated that the Parks & Recreation Commission is working with the two groups to this end.

Council Member Sellers indicated that the Council's Community & Economic Development Committee is reviewing the bio tech incubator project and will return to the Council with a report.

**OTHER REPORTS**

City Treasurer Roorda presented the Financial Policy Committee Quarterly Report. He stated that this is a timely update as the City concluded a fiscal year approximately a month ago. He said that the final results for the fiscal year have yet to be audited. It was his hope that the fiscal year end results will not change much, if at all. He stated that the City's revenues have been limited in terms of growth over the

last several years; but that this is a year where the City is seeing changes in growth. He noted that there is a substantial increase in the City's sales tax revenue base, and felt that the City was making excellent progress moving forward. He indicated that there has been a lot of activity in shifting funds at the State level between property taxes and vehicle in lieu fees. Although the City saw some strength in the property tax a couple of years ago, they were flat to a downward spiral. However, they are showing good growth. He said that hotel taxes were once thought to be a strong growth area for the City, especially with more hotels being constructed. With the downturn in the economy and lack of use of hotel space, the revenues expected did not result. It is the Financial Policy Committee's hope that the Transient Occupancy Tax (TOT) will continue to contribute a significant amount to the City's diverse revenue sources.

City Treasurer Roorda stated that the City continues in transition and expenses. The City saw substantial growth over the last year, and was within budget parameters. He said that there were some adjustments made for items not planned. He said that there have been increases in expenses associated with the new police facility in terms of operating expenses and other areas. He said that the fire area grew; noting that the City has a new contract with the Santa Clara County Fire Department for the provision of fire service protection. He did not believe that there would be a wide variation in costs for the next few years. He indicated that there have been some increases on the administrative side; in particular with legal costs. It is the hope that these are one time occurrences and that the costs will lessen in years to come. He noted that the aquatics center contributed approximately \$400,000 to the City's deficit due to increase in expenses. He informed the Council and public that the City has an adequate general fund balance of \$9.2 million. Although this amount is down from where the City was last year, the general fund reserve is still substantial for a city of this size. He stated that City staff understood the projected deficit; noting that the City has a five year budget strategy in place. He said that it is understood that the terms of the five year plan are such that the City will not have revenues matching expenses. He indicated that the Financial Policy Committee is working to address this issue and that additional information will come out as the Committee works on the five year plan.

Council Member Sellers stated that he has always appreciated the simplicity, in the positive sense, of the reports presented by City Treasurer Roorda and thanked him for the reports. He recommended that City Treasurer Roorda work with City staff and local media outlets to provide a wider distribution of his comments so that the public might be better informed. He said that it is difficult, as the Council goes through the budget process, to stop and address the bigger financial picture.

City Treasurer Roorda indicated that as the City Treasurer, he would like to make himself available to these kinds of outlets and communicate the City's financial position as widely as possible. He said that the Financial Policy Committee will be looking at ways to have a conversation with the broader community; setting the base line of where the City is today and where the City sees itself going so that individuals can make good decisions for the future and governance of Morgan Hill.

Mayor Kennedy requested that citizens shop locally in order to retain tax dollars in Morgan Hill to pay for police officers, fire fighters, recreation programs and other city services that are otherwise going to other cities.

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**PUBLIC COMMENT**

Chairman/Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

***Redevelopment Agency Action***

**CONSENT CALENDAR:**

Chairman Kennedy noted that there are individuals in the audience who wish to address the Agency Board regarding Consent Calendar Item 1.

**1. LOAN PROGRAM FOR RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDSCS) FOR THE DOWNTOWN SETASIDE**

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the item before the Agency Board is a loan program for the downtown RDSCS set aside category. He indicated that in July 2005, the City Council's Community & Economic Development Committee came to the Council with a recommendation for the creation of a loan program. The rationale for the creation of this program is to encourage developers to apply for downtown Measure C allocations, and assist with the financial costs associated with certain application fees and development costs. It was felt that these costs could be a barrier to individuals applying for downtown building allotments. Therefore, it is felt that a loan program would encourage more individuals to apply for downtown allocations. He indicated that the Community & Economic Development Committee and staff developed program guidelines, and is now reporting back to the Agency Board with the recommended program guidelines.

Chairman Kennedy opened the floor to public comment.

Charles Weston addressed the request made by he and Manou Mobedshahi to receive reimbursement for the fees spent in last year's competition. He felt that he entered into a competition that was held to receive allotments for that year. He said that he and Mr. Mobedshahi had several conversations with Planning Manager Rowe and acknowledged that the applications would be scored low before submitting the applications. However, they did not believe that they would score as low as they did; being scored substantially lower than the passing score. He said that through conversations with staff, they were led to believe that there would be recommendations later in April and May of the following year that they could achieve the necessary points or a grant to continue with the Measure C process. He said that since then his wife and a few planning commission members have spent 40-50 hours working on the process and got to the point where the project can score better. In order to test the water again, he has submitted a proposal two months in advance of the filing deadline in order to receive a preliminary scoring of the project; noting that the project review fee is \$4,000. He requested the Council reconsider the denial of the prior Measure C submittal application.

Vice-chair Tate did not understand how the request relates to this agenda item.

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Agency Member Sellers said that the request before the Council contains two components: the loan portion for this year's Measure C competition, and the denial of the request for reimbursement for the prior Measure C competition by the Community & Economic Development Committee.

Mr. Toy said that one of the guidelines contained in the report includes the consideration of providing a credit or reimbursement for an application submitted last year. He informed the Agency Board that the Community & Economic Development Committee considered several aspects of the request: staff time spent on the review of the application and fees to pay for staff time. He said that the applicant can reuse some of the information previously prepared for this year's competition; and that while the scoring criteria has been modified since last year, the project could have scored higher; but the applicants chose not to in some categories. He stated that the Community & Economic Development Committee did not support granting a credit or reimbursement, and are recommending that the Agency Board proceed with the guidelines as described in the staff report.

Manou Mobedshahi supported the comments as expressed by Mr. Weston. He said that it was their hope that last year's applications would fit into the program and that it may have been a premature application. He felt that they have demonstrated that they are willing and interested in submitting a Measure C application. He confirmed that he would be submitting a Measure C application again this year. He stated that he was not requesting a refund, but felt that it would be a good faith gesture for the City to grant a credit for the fees paid last year.

Mr. Weston felt that there was a disagreement with staff's statement that the project could have scored enough points had they wanted to. It was his belief that the statement came from a Planning Commissioner. As a developer, he did not believe that he could have scored enough points to make this project work.

Agency Member Sellers clarified that the Community & Economic Development Committee are recommending that the City implement a program this year that would allow individuals considering a project in the downtown to submit their application fees via a loan program. A developer would then be able to reimburse the City when their projects are approved. He noted that there are several small projects in the downtown and that it would result in a significant cost to submit Measure C applications (e.g., up to \$30,000). This was viewed as a significant barrier. The committee considered whether or not to allow applicants from previous years who were denied allotments and were applying again this year to receive reimbursement. Based on the considerations raised by staff and Mr. Weston, he stated the Committee could reconsider the request should the Agency Board so direct. He informed the Agency Board that the Committee had a concern that approval of the request may open the City to other applications in the downtown, or otherwise, who may have concerns or other questions. He concurred with Mr. Weston's comment that had he not applied last year and realized the futility of his efforts, the City would not be in the positive position it is today. Because Mr. Weston and Mr. Mobedshahi were guinea pigs and went through the process, he felt the City would end up with a much better process.

Chairman Kennedy inquired how much is being requested as a credit.

Mr. Toy said that it was his belief Mr. Weston is requesting reimbursement of application fees that

totalled approximately \$9,000 last year. However, he did not know whether Mr. Weston was requesting application fees plus out of pocket expenses to prepare the application.

Mr. Weston clarified that he was seeking reimbursement of application fees in the amount of \$9,000. He said that when Measure P was changed to Measure C, it included a category for downtown projects. One of the components for downtown projects is multi family mixed use. He said that his and Mr. Mobedshahi were the only two projects that applied for allotments under this category. Almost under every category, the project received 0-3 points because the criteria was not set up to score a high density mixed use downtown project. He indicated that a lot of components did not apply to attain points such as the Parks & Paths and Circulation Efficiency categories because the lots were small and cramped. Therefore, the category point system did not suit their ability to score well in the present system. He clarified that the scoring criteria remained the same throughout the entire year. After the year was over, there was a change in the scoring system. It was his belief that these two projects and others would score the minimum points required (160 points). He indicated that these two projects only scored approximately 110 points because the projects were scored 0-3 points under some categories. He felt that with the revisions incorporated into the scoring criteria, the projects would score better. He stated that he spent \$9,000 to find this out and that he would be a guinea pig again, but not so significantly this time around. He would be able to see how the City will score the project so that he can adjust the project to achieve a better overall project score. He indicated that he and Mr. Mobedshahi proceeded with the submittal of an application because they were conjecturing what would happen. He felt that both applications for multi family projects were submitted prematurely. By the submittal of their application, it was felt that the system would reward them for their efforts.

Mr. Toy clarified that these were the only two applications that were submitted for downtown allocations.

Agency Member Sellers reiterated that the Community & Economic Development Committee would be willing to reconsider the request in light of this evening's discussion. He noted that the applicants were not in attendance at the committee meeting. He felt that it would be important to structure a policy that does not leave the City vulnerable to similar issues in the future.

**Action:**        *Agency Member Grzan made a motion, seconded by Chairman Kennedy, to request that the Community & Economic Development Committee reconsider Mr. Weston and Mr. Mobedshahi's request.*

Agency Member Carr requested that the motion clarify that the Agency Board would be moving forward with the loan program as there are individuals wishing to apply by the October 2005 deadline. Therefore, the Agency Board needs to move the loan program forward regardless of the decision on the request by Mr. Weston and Mr. Mobedshahi.

**Action:**        *On a motion by Agency Member Grzan and seconded by Chairman Kennedy, the Agency Board unanimously (5-0) clarified the motion as follows: 1) **Approved** the Program Guidelines; 2) **Authorized** the Executive Director to do Everything Necessary and Appropriate to Establish and Implement the Program, Including the Preparation and*

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*Execution of Loan Documents; and 3) **Requested** the Community & Economic Development Committee to give further consideration to the request made by Mr. Weston and Mr. Mobedshahi.*

## ***City Council Action***

### **CONSENT CALENDAR:**

Council Member Grzan requested that item 9 be removed from the Consent Calendar.

Interim City Attorney Siegel informed the Council that it was his understanding that Consent Calendar Item 7 would be continued to the Council's September 7 meeting.

**Action:** *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-6, 8, and 10-16 as follows:*

2. **INDOOR RECREATION CENTER PROJECT – JULY CONSTRUCTION PROGRESS REPORT**

**Action:** **Information** Only.

3. **APPOINTMENT OF COMMUNITY CONVERSATION CONSULTANT**

**Action:** 1) **Authorized** the City Manager to Execute an Agreement with Viewpoint Learning Inc. for Community Conversation Public Engagement Services for a Maximum Cost of \$74,500; Subject to Interim City Attorney Review of the Form of Agreement; and 2) **Increased** General Fund Appropriations by \$25,000 for other Community Conversation Services and Expenses.

4. **APPOINTMENT OF EXECUTIVE SEARCH FIRM FOR CITY ATTORNEY RECRUITMENT**

**Action:** **Authorized** the City Manager to Execute an Agreement with Bob Murray & Associates for City Attorney Recruitment Services for a Maximum Cost of \$24,400; Subject to Interim City Attorney Review of the Form of Agreement.

5. **CAPITAL IMPROVEMENT PROGRAM FUNDING FOR REGIONAL SOCCER COMPLEX**

**Action:** **Received** Recommendation from the Library, Culture & Arts Commission; and Letter from Chairperson Anderson Stating that the CIP Funds Designated for Assisting Construction of a Regional Soccer Complex at Sobrato High School be reallocated to the Library Project.

6. **COMMUNITY PARK IMPROVEMENTS – RESOLUTION SUPPORTING A GRANT FUNDING APPLICATION FOR THE PER CAPITA GRANT PROGRAM UNDER THE STATE CLEAN WATER, CLEAN AIR, SAFE NEIGHBORHOOD PARKS, AND COASTAL PROTECTION ACT OF 2002 – Resolution No. 5938**

**Action:** **Adopted** Resolution No. 5938, Approving the Filing of an Application for Local

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*Assistance Funds from the Per Capita Grant Program under the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002.*

8. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9396, COYOTE CREEK ESTATES – Resolution No. 5939**  
*Action:* 1) **Adopted** Resolution No. 5939, Accepting the Subdivision Improvements Included in Tract 9396, Commonly Known as Coyote Creek Estates; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.
10. **PUBLIC WORKS MAINTENANCE AGREEMENT FOR EMERGENCY PUMP MAINTENANCE AND REPAIRS FOR BOOSTER STATIONS FOR FISCAL YEARS 2005-2006 AND 2006-2007**  
*Action:* 1) **Approved** New Maintenance Agreement for Emergency Pump Maintenance and Repairs for Booster Stations; and 2) **Authorized** the City Manager to Execute the Agreement on Behalf of the City.
11. **ACCEPTANCE OF THE SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) TELEMETRY REPLACEMENT PROJECT**  
*Action:* 1) **Accepted** as Complete the SCADA Telemetry Replacement Project (PN 606093) in the Final Amount of \$994,898; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.
12. **MEMBERSHIP IN SILICON VALLEY HIGH-SPEED RAIL COALITION**  
*Action:* 1) **Approved** the Regional Planning and Transportation Sub-Committee Recommendation that the City of Morgan Hill Join the Silicon Valley High-Speed Rail Coalition; and 2) **Authorized** the Mayor to Support the Silicon Valley High-Speed Rail Coalition.
13. **APPROVAL OF IMPROVEMENT AGREEMENT FOR LUSAMERICA**  
*Action:* 1) **Approved** the Improvement Agreement; and 2) **Authorized** the City Manager to Sign the Agreement on Behalf of the City with Frederico Enterprises I, LLC.
14. **AWARD MONTEREY ROAD BIKE DETECTION INSTALLATION PROJECT**  
*Action:* 1) **Awarded** Contract to Beltramo Electric, Inc. for the Installation of the Monterey Road Bicycle Detection Project in the Amount of \$36,455; and 2) **Authorized** Expenditure of Construction Contingency Funds, Not to Exceed \$3,645.
15. **SECOND AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP**  
*Action:* **Authorized** the City Manager to Execute a Second Amended Agreement with the Law Firm of Jorgenson, Siegel, McClure and Flegel, LLP.
16. **LOCAL HAZARD MITIGATION PLAN STRATEGIES**  
*Action:* **Reviewed** the Pre-Disaster Mitigation Strategies for Information Purposes as Required by the Disaster Mitigation Act of 2000 and the Association of Bay Area Governments.

7. **WATER METER SOLE SOURCE PURCHASE**

**Action: Took** *No Action. (This item to be reagendaized for the Council's September 7, 2005 meeting.)*

9. **REIMBURSEMENT FOR PUBLIC IMPROVEMENTS BY COYOTE CREEK ESTATES (TRACT 9396)**

Council Member Grzan noted that the City commenced this project and that additional costs were incurred.

Director of Public Works Ashcraft indicated that the City began the project and that during construction; staff found efficiencies that could be made to the overall public street improvement project by extending what the developer was required to do. He indicated that the developer has concluded the additional work. Therefore, staff recommends that the developer be reimbursed from the Measure C Capital Improvement Program (CIP) fund.

Council Member Grzan inquired as to reimbursement guarantees made to the developer, if any.

Mr. Ashcraft informed the Council that no guarantees for reimbursements were made, but that the developer was advised that staff would recommend reimbursement to the Council. He clarified that the Council is under no obligation to reimburse the developer, however, in fairness, staff believes that the developer should be reimbursed from the Measure C CIP funds. He informed the Council that typically, staff recommends Council approval of a subdivision improvement agreement, and recommends a reimbursement agreement. Typically, work is designed and is ready to proceed. However, this is one of those cases where during construction it became evident that storm drain problems could be solved. Had staff delayed the approval for reimbursement by bringing the recommendation to the City Council, the developer would have incurred additional costs or stand down from the job instead of proceeding. This was the reason the reimbursement request was not brought before the Council, initially. He said that typically, the Council approves reimbursements, upfront, as design issues are known upfront. He said that there may be couple of times during the year that staff will bring a reimbursement request to the Council after the fact. Typically, staff brings 6-8 pre reimbursement requests to the Council as the improvements have been designed before the subdivision moves forward. There are times that staff finds efficiencies can be made during construction where the City can make a big impact and not spend a lot of money. He said that improvements were made to curb, gutter, sidewalk, drainage, and some undergrounding of utilities. He stated that the 210 feet of improvements made a big improvement to this specific area.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Grzan, the City Council unanimously (5-0): 1) **Approved** Appropriation of \$59,066 from Current Year Unappropriated Public Facility/Non-AB 1600 (346) Fund to fund this Reimbursement; and 2) **Authorized** Reimbursement of \$59,066 for Installation of Off-Site Improvements by 5M Development LLC.*



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## ***Redevelopment Agency and City Council Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Vice-chair/Mayor Pro Tempore Tate and seconded by Agency/Council Member Sellers, the Agency Board/City Council unanimously (5-0) **Approved** Consent Calendar Items 17-19 as follows:*

17.    **POLICY REGARDING THE SELECTION OF VICE-CHAIR TO THE REDEVELOPMENT AGENCY**

**Action:** **Amended** *City Council Policy to stipulate that the Mayor Pro Tempore, who is Appointed on an Annual Rotation Basis, is also to Serve as Vice-Chair to the Redevelopment Agency.*

18.    **JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF JULY 27, 2005**

**Action:** **Approved** *the minutes as submitted.*

19.    **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF AUGUST 3, 2005**

**Action:** **Approved** *the minutes as submitted.*

## ***Redevelopment Agency Action (Continued)***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Vice-chair Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 20 as follows:*

20.    **JULY 2005 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT**

**Action:** **Accepted** and **Filed** Report.

## ***City Council Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 21 and 22 as follows:*

21.    **JULY 2005 CITY FINANCE & INVESTMENT REPORT**

**Action:** **Accepted** and **Filed** Report.

22.    **JULY 2005 FINAL FINANCE & INVESTMENT REPORT**

**Action:** **Accepted** and **Filed** Report.

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **23. FIRE INSPECTION AND PLAN REVIEW FEES – Resolution No. 5940**

Finance Director Dilles indicated that during the budget hearings, staff informed the Council that staff included, in the proposed fiscal year 2005-06 budget, some revenues for fire inspections and plan review fees. Staff did so realizing that the Council had not yet considered these fees, but that staff felt that it would be prudent to include the fees as part of the City's revenue sources for the general fund this fiscal year. He said that it is important for the City to recover its costs with a fee structure, wherever possible. He stated that these fees are a step in that direction; noting that it is the Council's general policy to recover 100% of costs for most City services. He indicated that staff has been working with the Santa Clara County Fire Department over the last several months. He noted that Deputy Fire Chief Dirk Mattern was in attendance, should the Council have any questions. He said that the County Fire Department helped estimate that there would be 937 physical inspections to be held each year and approximately 443 self inspections. It is staff's belief that the proposed \$210 fee is reasonable for annual inspections compared to other jurisdictions. He informed the Council that staff advised the Chamber of Commerce of the proposed fees and that they wanted to know the impact of the fees on certain annual events; specifically Fourth of July, Taste of Morgan Hill, and Mushroom Mardi Gras events. Staff looked at the proposed fee schedule; indicating that it would show that fire inspection fees would be charged. He stated that the budget assumes that these fees would be received this fiscal year. He informed the Council that a replacement Exhibit A was distributed to the Council this evening relating to the proposed fee schedule. He clarified that the replacement page does not change the fees; only changes the descriptions.

Mayor Kennedy inquired how the City would be assured that the self inspections are done properly and meets the criteria requested.

Dirk Mattern, Santa Clara County Fire Department, stated that the self inspection program gives business owners 30 days to respond. If business owners do not respond to the self inspection, fire staff will contact them. He indicated that this is a three year cycle and that every third year, businesses would receive a physical inspection. Self inspections could occur in the other two years. He clarified that self inspections are authorized for very low risk occupancies that have a proven track record of having good compliance.

Council Member Sellers appreciated the staff report outlining the details. He noted that the hazardous materials facility inspection permit fees went down.

Mr. Dilles said that staff looked at the current fees being charged. He stated that the new fees were based entirely on the number of hours it would take, multiplied with the hourly rate; adding County overhead, to come up with the fee recommendation.

Mayor Kennedy indicated that fees are based on actual costs, not arbitrary costs, and that there is a direct connection to what it costs to perform the inspections.

Council Member Sellers appreciated that this item was forwarded to the Chamber of Commerce for their consideration. He stated that the tent/canopy fee and the fire fees are appropriate based on the time it takes to inspect. However, he had no doubt that the inspection fees would impact fees. He inquired whether IDI was directly contacted or are cognizant to the proposed fees; incorporating these fees into their budgeting. He would like to avoid any last minute requests for funding because an agency did not realize that fire inspections fees would be required.

Mr. Dilles responded that staff did not notify IDI about the fees, but would agree to do so. He clarified that the FY 2005-06 budget includes \$340,000 in estimated revenues. It is projected that that \$301,000 in revenues would be collected. However, in the partial year remaining, staff believes that the City would only bring in \$254,000. Therefore, \$86,000 is the difference between the \$340,000 contained in the budget document and that the \$254,000 that is being estimated for the fiscal year.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Mayor Kennedy thanked City staff and Fire Department staff for bringing this matter to the Council's attention; the fact that the City was not adequately covering its costs.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Adopted** Resolution No. 5940, Revising Fire Inspection and Plan Review Fees.*

**24.    AMENDMENT OF MUNICIPAL CODE REGARDING ADOPTION OF THE 2004 CALIFORNIA ELECTRICAL CODE – Ordinance No. 1736, New Series**

Chief Building Official Ford presented the staff report on the request to adopt the 2004 California Electrical Code. He informed the Council that the building division staff held a special workshop with the development community; indicating that none of the local builders or developers objected to the proposed amendments.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1736, New Series.*

**Action:**        *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1736, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 1.01.010 G OF CHAPTER 1.01 (CODE ADOPTION) OF***

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***TITLE 1 (GENERAL PROVISIONS), AMENDING SECTION 15.12.020 (ADOPTION OF THE CALIFORNIA ELECTRICAL CODE) AND ADDING SECTION 15.12.040 (ADDING CALIFORNIA ELECTRICAL CODE ARTICLE 334.12 REGARDING NON-METALLIC-SHEATHED CABLES) TO THE MORGAN HILL MUNICIPAL CODE TO INCLUDE THE CURRENT EDITION OF THE CALIFORNIA ELECTRICAL CODE, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

## ***City Council Action***

### **OTHER BUSINESS:**

#### **25. STATUS REPORT ON MORGAN HILL AQUATIC FOUNDATION**

Mayor Kennedy indicated that several Council members requested that this item be brought forward. He stated that the City Manager sent a letter to the president of the Morgan Hill Aquatics Foundation (Foundation), Geno Acevedo, asking that specific questions be answered.

Mayor Kennedy opened the floor to public comment.

Geno Acevedo said that after receiving a letter from City Manager Tewes, it was his understanding that there would be a roundtable discussion about the concerns. It was his interpretation that he was to be prepared to answer questions. However, after some e-mail discussions with City Manager Tewes today, it was suggested that he put some answers in writing. He indicated that he prepared responses to questions that have been forwarded to the Council. He informed the Council that he did not prepare a presentation as he felt he was clear in his responses. He stated that he and Board of Directors were in attendance and available to respond to Council concerns.

Mayor Pro Tempore Tate indicated that he has not had an opportunity to review the Foundation's response.

Mr. Acevedo said that it was his understanding that there is a concern that the bylaws were recently amended. He clarified that the Foundation originally organized to be a clearinghouse to solicit donations in order to open the aquatics center facility. Over time, the Redevelopment Agency Board decided to fully fund the facility. Therefore, as the facility evolved and the maintenance and operations of the facility evolved, the Foundation Board decided it was time to update the bylaws to reflect the current situation.

Council Member Grzan inquired whether the aquatics facility was constructed to the Foundation's satisfaction; noting that it is being indicated that there are some things that still need to be completed in order to function financially (e.g., lane lines, score board, bleachers, etc.).

Mr. Acevedo said that it was original envisioned to have concrete bleachers on at least one flanking side, the north side, to block the wind and provide storage underneath the bleachers. He noted that this was

value engineered out of the project early on as it was an expensive structure to build. He informed the Council that temporary bleachers were installed on the team lawns on either side of the competition pool and that a wind screen was added. He said that the temporary bleachers accommodated approximately 1,000 individuals. In time, the Foundation would like to have these bleachers installed permanently to accommodate swim and major events. He said that a score board and bleachers are needed in order to make the facility fully functionally as originally envisioned. The vision is to be able to host local, regional and national competitions.

Council Member Grzan noted that it has been stated that the aquatics center lost \$358,000 and that there is a new number in losses identified at \$400,000. He inquired how the Foundation can play a role in reducing some of the City's costs.

Mr. Acevedo said that the Foundation Board has not been provided with details of expenses, profit loss statements, or balance sheets. He stated that the Foundation Board would like the opportunity to look at the numbers and help balance the budget; assisting with the marketing and revenue side of the facility. He said that the Foundation originally envisioned having some oversight where its business experience could help. He has viewed expenditures that account toward the loss that he felt could be avoided. He informed the Council that the Foundation raised approximately \$30,000-\$40,000 last year, but is currently operating at a loss.

Council Member Sellers appreciated that the name of the organization has been changed because it will help everyone in terms of clarification. He stated that he would like to receive clarification about the relationship between the City and the Foundation. This will give the Foundation a sense of direction and where the aquatics center is heading, with the Foundation being allowed to provide input into the direction. He felt that staff did a good job in identifying where things have gone wrong. He wanted to know if there was a process whereby the City can make requests of the Foundation. He noted that in one of the bylaw changes mentioned in section 1, it references "Providing support to organizations that are of priority. Represent the competitive aquatics sports community of Morgan Hill in USA swimming, water polo, diving, and synchronize swimming." He felt that this was a positive statement. However, it can be taken in one of two ways: any body that does these things would be entitled or have access to funding; or if one does these things, an individual/entity might have access to funding. He felt that it would be helpful to the community and the City to further elaborate on what the process might be. He recommended clarification on the qualifications that would make an organization eligible for assistance from the Foundation. He thanked Mr. Acevedo for all that the Foundation has done.

Mr. Acevedo said that the Foundation has been approached for assistance. The first communication with individuals or organizations is verbally. When additional clarification is desired, the Foundation will request something in writing. He indicated that the Foundation has received letters from swim teams and water polo teams for assistance. He understood the need to make the qualifications clearer. He stated that not more than \$500 has been spent on administration (e.g., paying the State of California filing fees) and that the rest has been spent on the aquatics center or toward fundraising activities/associated fees. He said that the bulk of \$50,000 went toward assisting with the maintenance and operations during the off season last year. He said that City staff asked for a solid commitment to assist with operations and maintenance and that the Foundation committed to assist. He informed the Council that the name of the

foundation was changed at the request of the Council so as not to confuse anyone. He said that the Foundation originally picked the name “Morgan Hill Aquatics Foundation.” However, the Morgan Hill Community Foundation was forming, at that time, and that it was felt that there might be some confusion, globally. Therefore, not to confuse anyone about the number of foundations in Morgan Hill, they used the name Morgan Hill Aquatics Center, Inc.

Mayor Kennedy did not believe that the aquatics center’s \$400,000 budget deficit was the correct number.

City Manager Tewes said that a few weeks ago, staff presented an aquatics operating plan. Staff indicated that the aquatics center’s loss was approximately \$358,000 for the fiscal year ending June 30, 2005. However, staff informed the Council that this number could change, based on subsequent accounting adjustments. He stated that staff has not yet closed the books. Therefore, staff does not have a final number to present to the Council, but that it is anticipated that staff’s estimate is a good one.

Council Member Grzan indicated that he just came from a Financial Policy Committee and that he asked the Finance Director whether the aquatics center lost more than \$358,000. He said that the Finance Director indicated that the City lost approximately \$400,000. Therefore, the number he used this evening came from the City’s Finance Director. He said that there are a number of individuals who believe the Foundation to be a self serving organization; raising monies to fund its own groups and activities. He inquired how the Foundation could help dispel some of these perceptions.

Mr. Acevedo did not believe that there were many members in the community that have this feeling, but only a few individuals who are bending the Council’s ear at this time.

Council Member Grzan inquired whether the fees paid by the Foundation from fundraising efforts for the use of the aquatics facility are perceived to be self serving.

Mr. Acevedo said that the Foundation raised \$30,000 last year and that these funds supported several groups: Morgan Hill Water Polo, El Toro Brew Masters Water Polo and the Morgan Hill Swim Club. These funds were also used to purchase equipment to be used by those using the aquatics facility (e.g., long course lane lines, storage shed, etc.). He indicated that the master swimmers and tri athletes are not part of the Aquatics Foundation.

Council Member Grzan requested a financial break down of receipts and distribution of Foundation dollars. He wanted to know how much of the fees went back into Mr. Acevedo’s organization. He said that it is the public’s perception that this non profit organization is raising monies to meet its own aquatics needs and that without information from the Foundation, it continues to be a sore spot in the community. He recommended that the City and/or Foundation clarify this some how.

Mr. Acevedo reiterated that it was his belief that this was a general statement and that there are only a few individuals who are questioning expenditures. He said that the funds are used to help pay for the maintenance and operation of the facility. He noted that user fees for the aquatics facility are generally higher than other similar facilities. He said that the Foundation pays the fees as it had been shown that

these fees would help balance the aquatics center's budget. He indicated that John Rick would be the individual to provide Council Member Grzan with the information requested.

Council Member Carr inquired as to the status of the brick sale.

Mr. Acevedo said that brick forms are available at the brewery, city hall lobby, aquatics center lobby, and John Rick's office. He said that the brick sales is the Foundation's best opportunity to raise funds at this time. He said that \$100,000 worth of profit can still be made with the sale of bricks. He said that the sale of bricks is going relatively well. He stated that \$100,000 could be funneled into all of the things that would help the aquatics center become a better facility. He said that the Cool Brews for Cool Pools festival has proven to be a good fundraiser event, and that it would continue to be an annual fundraising effort; growing the festival. He felt that other similar festivals can be programmed. He reiterated the Foundation's willingness to assist the City with the skills of board members.

No further comments were offered.

**Action:**        *No action was taken.*

## **26.     REQUEST TO SCHEDULE A HALF-DAY CITY COUNCIL WORKSHOP**

Council Member Grzan noted that the Council was at a half way point in the year and that this would be a good opportunity to recap where the Council is and what it has accomplished. The Council can focus on its goals and make adjustments, if necessary, as opposed to waiting to the end of the year only to find that it missed its goals. He noted that Mayor Pro Tempore Tate stated, at the last Council meeting, that it would be good to review how well the Council subcommittees are working. He indicated that he has some issues regarding crossovers and other issues that need to be discussed. He felt that a half day Council session would be good to be held during the week or weekend. He said that the use of the Council Chambers often does not allow the Council to explore other questions and dwell on other items as discussions are specific to the agenda items listed. He felt that an open forum, similar to that used at the Council's annual goal setting session, would be helpful to build relationships, look at solutions and address where the Council is and where it is heading.

Council Member Sellers recommended coordinating the workshop with other activities (e.g., city attorney selection/interviews). He would agree to a weekend session in late December or early January.

Mayor Kennedy said that Fridays are generally good days for him to meet.

The Council identified the following Fridays as possible meeting dates: September 2, 9, 16, 23, or 30.

Mayor Kennedy requested that the Council members e-mail expectations of the meeting to the City Manager or City Clerk.

**Action:** *It was the consensus of the City Council to **Conduct** a workshop on Friday, September 30 2 p.m. to 6:00 p.m.; concluding the meeting with dinner. Staff to assist with finding an appropriate meeting location.*

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

## ***Redevelopment Agency and City Council Action***

### **CLOSED SESSIONS:**

Interim Agency Counsel/City Attorney Siegel announced the below listed closed session items:

1.

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 2

2.

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: General Lighting Service, Inc. v. Wells  
Construction Group, et al. [Consolidated Actions]  
Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561

3.

**CONFERENCE WITH LABOR NEGOTIATOR:**

Authority: Government Code Section 54957.6  
Agency Negotiators: City Manager; Human Resources Director  
Employee Organizations: AFSCME Local 101  
Morgan Hill Community Service Officers Association

4.

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Authority: Government Code 54957  
Public Employee Performance Evaluation: City Manager  
Attendees: City Council, City Manager

### **OPPORTUNITY FOR PUBLIC COMMENT**

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

### **ADJOURN TO CLOSED SESSION**

Chairman/Mayor Kennedy adjourned the meeting to Closed Session at 8:20 p.m.



**RECONVENE**

Chairman/Mayor Kennedy reconvened the meeting at 11:28 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Agency Counsel/City Attorney Siegel announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 11:30 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, AGENCY SECRETARY/CITY CLERK**